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Pagina Nugis Completa

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Pagina Nugis Completa

It is through justice that the legal process yields solace. But according to Holmes, it is through ideas that the jurist catches “an echo of the infinite, a glimpse of its unfathomable process, a hint of the universal law.”* Holmes’ ardor in protecting this realm of “ideas” is perhaps best understood in light of his dissenting opinion in *Gitlow v. New York*.** Gitlow had been convicted of criminal anarchy for circulating a communist manifesto during World War I. The majority of the Supreme Court, affirming the conviction, determined that the publication was an incitement, a “revolutionary spark [which] may kindle a fire that, smouldering for a time, may burst into a sweeping and destructive conflagration.” The state is therefore not acting arbitrarily if it “seeks to extinguish the spark without waiting until it has enkindled the flame or blazed into the conflagration.” Holmes retorted:

Every idea is an incitement. It offers itself for belief and if believed it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker’s enthusiasm for the result. Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us it had no chance of starting a present conflagration. If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.

No matter that Holmes’ stance may step on some political toes, his loyalty was not to a particular ideology but to his own special dogma—ideas. It is through ideas that we enable the legal process to conceive justice.

The Editors

* Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 478 (1897).

** 268 U.S. 652 (1925).